

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM) NOTICE OF PUBLIC HEARING ON
2.21.1701, 2.21.1702, 2.21.1703,) PROPOSED REPEAL
2.21.1711, 2.21.1712, 2.21.1713, and)
2.21.1731 pertaining to overtime and)
nonexempt compensatory time)

TO: All Concerned Persons

1. On July 8, 2010, at 2:00 p.m., the Department of Administration will hold a public hearing in Room 136 of the Mitchell Building, at 125 N. Roberts, Helena, Montana, to consider the proposed repeal of the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on July 1, 2010, to advise us of the nature of the accommodation needed. Please contact Marjorie Thomas, Department of Administration, P.O. Box 200127, 125 N. Roberts, Helena, Montana 59620; telephone (406) 444-3982; fax (406) 444-0703; Montana Relay Service/TDD 711; or e-mail mthomas2@mt.gov.

3. The department proposes to repeal the following rules:

2.21.1701 SHORT TITLE found at page 2-813 of the Administrative Rules of Montana (ARM).

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

2.21.1702 POLICY AND OBJECTIVES found at ARM page 2-813.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

2.21.1703 DEFINITIONS found at ARM page 2-813.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

2.21.1711 ADMINISTRATION OF OVERTIME COMPENSATION AND
NONEXEMPT COMPENSATORY TIME found at ARM page 2-814.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

2.21.1712 OVERTIME COMPENSATION found at ARM page 2-815.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

2.21.1713 NONEXEMPT COMPENSATORY TIME found at ARM page 2-815.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

2.21.1731 CLOSING found at ARM page 2-816.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: The overtime and nonexempt compensatory time policy rules, which include all of the above-stated rules proposed to be repealed, concern only the internal management of state government because the policy affects state employees' overtime and nonexempt compensatory time and not private rights or procedures available to the public. The DOA has determined that the overtime and nonexempt compensatory time policy is consistent with the type of information not included within the definition of rules as defined in the Montana Administrative Procedure Act. According to the definition of "rule" in 2-4-102(11)(a) and (b), MCA, rules do not include "rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide accounting, budgeting, and human resources system." This language was included in statute in 2003, and the State Human Resources Division has been removing its internal administrative policies from the Administrative Rules of Montana as part of its policy review process.

Repealing these rules from ARM does not mean that the policy is no longer effective. Agencies are still bound to follow the policy. A revised overtime and nonexempt compensatory time policy for state employees will be included instead in the Montana Operations Manual (MOM), a document that addresses the internal management of state government. MOM policies may be found at <http://hr.mt.gov/hrpp/policies.mcp> and employees may comment on the proposed overtime and nonexempt compensatory time policy found on <http://hr.mt.gov/hrpp/policyproposals.mcp>. A notice of this policy review is also posted on the MINE web page, an internal site for state employees. Future proposed revisions will be posted on MINE as well.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Marjorie Thomas, Department of Administration, P.O. Box 200127, 125 N. Roberts, Helena, Montana 59620; telephone (406) 444-3982; fax (406) 444-0703; or e-mail mthomas2@mt.gov, and must be received no later than 5:00 p.m., July 12, 2010.

5. Marjorie Thomas, an attorney with the Department of Administration, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding State Human Resources Division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/administrativerules.mcp.x>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State June 1, 2010.